IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

RFA.No. 520 of 2007()

OS.29/2006 of PRINCIPAL SUB COURT,PARAVUR
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APPELLANT/PLAINTIFF

SABU S/O.PAPPACHAN, VALIYAPARAMBIL HOUSE
CHIRAKKAKAM KARA, VARAPUZHA VILLAGE,
PARAVOOR TALUK.

BY ADV. SRI.S.SHYAM
SRI.BOBBYMATHEW KOOTHATTUKULAM

RESPONDENTS: DEFENDANT

PAILAPPAN S/O.CHACKO, KANAPPILLY HOUSE,
OLANAD KARA, ALANGADU VILLAGE, PARAVOOR TALUK.

BY ADV. SRI.DINESH R.SHENOY

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & V. K. MOHANAN, JJ.

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R.F.A. NO. 520 OF 2007

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DATED THIS, THE 2ND DAY OF NOVEMBER, 2007.

J U D G M E N T

Raman, J.

Plaintiff is the appellant. The suit is one for specific performance. As per the plaint averment, the defendant agreed to sell the plaint schedule property to the plaintiff as per Ext.A1 agreement dated 1.8.2005 for a total consideration of Rs.2,60,000/-, after receiving an amount of Rs. 10,000/-. The period for performance of the agreement was six months. The defendant, in the mean time, had to measure the property, convince the extent of the same and also to hand over the relevant documents. Since it was not done, the suit was instituted. The defendant contended that there was no agreement between the parties with an intention to sell the property. According to him, in connection with the marriage of his daughter, he borrowed an amount of Rs. 10,000/- and by way of security only Ext.A1 was executed. He also expressed his willingness to repay the advance amount with interest at 12%. PWs 1 and 2 were examined and Exts. A1 to A4 were marked on the side of the plaintiff. DW.1 was examined on the side of the defendant. No documentary evidence was adduced on his side.

the court below decreed the suit by granting alternate relief of return of the advance amount of Rs. 10,000/- with interest at 12% per annum.

2. Ext.A1 agreement as such is not disputed. But according to the respondent/ defendant, the same was executed as a collateral security towards discharge of the loan amount borrowed by him from the appellant/plaintiff. According to the appellant, he had reliable information that the respondent/defendant was going to sell the property to strangers when the market value is shot up. The fact that the price of property has gone up is established by Ext.A4 as it relates to a neighbouring property. According to the defendant, the plaintiff was not ready and willing to perform his part of the contract as there was no money with him. Ext.A3 pass book was produced by the appellant/plaintiff to establish that he had sufficient fund to execute the sale deed. According to the defendant, the entry in Ext.A3 pass book will only show that the plaintiff had money with him but not before the expiry of the period of contract.

3. Being a discretionary remedy and considering the totality of the facts and circumstances, the court below has granted a decree for return of the advance amount with interest. After hearing both sides, the court below found that the respondent/defendant could not establish that Ext.A1 was executed as a collateral security for the money he borrowed. He has also not measured the property which was a step in furtherance of the

agreement entered by him. However, the court below has exercised its discretion by granting a decree for return of the advance amount with interest. We do not think that specific performance as such could have been granted. Hence the finding of the court below declining to grant a decree for specific performance of the agreement does not call for any interference. We think, in the factual situation, a further amount of Rs. 10,000/- (ten thousand) shall be paid by the respondent/defendant to the appellant/plaintiff. The learned counsel appearing for the defendant fairly agreed to pay the same.

4. Accordingly, we modify the decree passed by the court below, directing the respondent/defendant to pay an amount of Rs. 10,000/- with interest at the rate of 12% per annum from 1.8.2005 till realisation and a further amount of Rs. 10,000/-, which, however, will not carry any interest.

The appeal is disposed of as above. The parties shall bear their respective costs.

P.R. RAMAN,
(JUDGE)

V. K. MOHANAN,
(JUDGE)

knc/-